IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No.234 of 2004

Decided on:July 23, 2007.

Devender Kumar **…Appellant.**

VERSUS

State of H.P. **….Respondent.**

Coram

The Hon'ble Mr.Justice Surjit Singh, Judge.

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] Yes

For the Appellant: **Mr.T.R.Chandel with Mr.Vinay Thakur and Ms.Ritta Goswami, Advocates.**

For the respondent: **Mr.Som Dutt Vasudeva, Addl.A.G.**

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Appellant has been convicted of offences under Sections 302 and 498-A I.P.C. and sentenced to undergo life imprisonment and to pay a fine of Rs.5000/- for offence under Section 302 IPC and to undergo rigorous imprisonment for one year and to pay a fine of Rs.5000/- for offence under Section 498-A IPC by the trial Court. He is aggrieved by the judgment of conviction and sentence and has, therefore, filed this appeal.

3. Prosecution case, as per record, may be summed up thus. On the night intervening 6th and 7th October, 2000, appellant

---

Whether the reporters of the local papers maybe allowed to see the judgment? Yes

returned to his house in a drunken condition and picked a quarrel with his wife. He started accusing her of infidelity and making money by indulging in immoral activities. Then he allegedly poured kerosene on her and set her on fire. She was rushed to Civil Hosopital, Solan. She made a statement, Ext.DA, that she was lighting the kerosene stove when kerosene got spilled and caught fire and because of that she sustained injuries. The statement was recorded by Incharge, Police Post, City, Solan, the same night some time before 1.30 A.M., (because there is another document exhibited as DA, which is a copy of an entry in the *Roznamcha,* timed 1.30 A.M. and records that statement had been recorded at the hospital after obtaining the opinion of the Doctor in writing that she was fit to make the statement). The statement was recorded in the presence of Dr.V.B.Sood (PW-9) S.M.O. Zonal Hospital, Solan. First aid was provided to her and she was referred to IGMC, Shimla. Appellant was also having third degree burn injuries on his hands and forearms and first degree burn injuries on his face. He was medically examined and admitted to the hospital for treatment of those injuries. Another statement of the wife of the appellant was recorded at IGMC Shimla, when she was admitted there. The same was recorded during day time on 7th October, 2000. This statement was also recorded in the presence of a doctor, namely, Shivani Dogra (PW-15). In this second statement, the deceased (wife of the appellant) got recorded that the appellant first gave her beatings then poured kerosene on her and set her on fire and even before that he had been

maltreating and causing physical and mental torture to her. On the basis of this second statement, case was registered against the appellant, initially under Sections 307 and 498-A IPC but when on 13th October, 2000 the victim expired, the case was converted into one, under Section 302 IPC.

4. During the course of trial, the prosecution proved the second statement of the deceased, which she made on 7th October, 2000, while admitted in IGMC, Shimla. It also examined a minor daughter of the deceased, namely Kumari Komal (PW-1) who was 12 years of age at the time of the incident. It also examined police officer, A.S.I., who recorded the subsequent statement of deceased Ext.PW-3/A at IGMC, Shimla. Dr.Shivani Dogra, in whose presence the subsequent statement was made, was also examined. A sister of the deceased, in whose presence the aforesaid statement has allegedly been made, had also been examined.

5. Appellant took the plea that this was a case of accidental fire and that the deceased caught fire while correcting some error in the burning kerosene stove with a pin and he tried to extinguish the fire and in that process sustained serious injuries on his hands, forearms as also the face. He examined his son, Saurav Kumar (DW-1), who is senior in age to PW-1 Kumari Komal by two years in support of his plea.

6. The trial Court has believed the prosecution version without giving any cogent reasons for disbelieving the earliest version given by the deceased in the form of statement Ext.DA which she

made to a police officer in the presence of PW-9 Dr.V.B.Sood, within a couple of hours of the occurrence of the incident. Also the trial Court has placed too much reliance on the statement of PW-1 Kumari Komal inspite of the fact that she has contradicted her previous statement, under Section 154 Cr.P.C. which she made to the police and in which she gave the same version as the deceased in her earliest statement Ext.DA.

7. We have heard learned counsel for the appellant and gone through the evidence. Ext.DA is the statement which the deceased made soon after being taken to the Zonal Hospital at Solan. According to the testimony of PW-9 Dr.V.B.Sood she had been brought to the hospital at 12.15 in the night. As already noticed, the statement Ext.DA had been recorded before 1.30 A.M., per *Roznamcha* entry, copy Ext.DA. That means the statement was recorded within an hour of the arrival of the deceased at Zonal Hospital, Solan. It is recorded in the statement that it was a case of accidental fire. She categorically stated that her husband made all efforts to extinguish the fire. PW-9 Dr.V.B.Sood, by whom the statement Ext.DA is attested, stated that she was in a fit state of mind and conscious when the aforesaid statement was made by her.

8. The version recorded in Ext.DA is corroborated by other evidence particularly the fact that the appellant himself was having third degree burn injuries on his hands and forearms and first degree burn injuries on his face. His beard was partly burnt and hair on the front side of the head was also burnt. This condition of the appellant

corroborates the version which the deceased gave to the police vide statement Ext.DA.

9. The second statement Ext.PW-13/A, which the deceased is alleged to have made to PW-13 A.S.I. Sohan Lal Dhiman, in the presence of PW-15 Dr.Shivani Dogra, is of doubtful nature. The statement Ext.PW-13/A, per endorsement of PW-13, A.S.I. Sohan Lal, shows that it was made on 7th October, 2000 around 5 P.M. but PW-15, Dr.Shivani Dogra, says that it was made at 8 or 9 A.M. on 7th October, 2000. Again, Dr.Shivani Dogra (PW-15) even though denies that deceased was conscious when the statement was recorded, yet she admits that she was in the delirium and not coherent when her statement Ext.PW-13/A was recorded. She does not say that she had been certified to be fit to make a statement or any medical opinion was sought by the police people on the point whether she was fit to make a statement or not before her statement Ext.PW-13/A was recorded. It is not only in the testimony of PW-13 A.S.I. Sohan Lal and PW-15 Dr.Shivani Dogra that there is contradiction about timing of the recording of the said statement, one more witness, namely Rekha (PW-2), a sister of the deceased, has testified a different time of the making of the statement. According to her, the statement was made at 12$^{0'}$ Clock. The mother of the deceased Krishna Devi says that when she reached the hospital around 4 P.M., the condition of her daughter was serious and her statement had been recorded forcibly. That means she was not in a fit state of mind

to make statement and that the statement allegedly made by her was not a voluntary one.

10. In fact it is Ext.DA, which should have been given more weightage than Ext.PW-13/A for the reason that statement Ext.DA was made by the deceased immediately after the occurrence and the time lag between the occurrence of the incident and the making of the statement was too short for any manipulation.

11. Time lag between the incident and the making of statement Ext.PW-13/A is too long and the possibility of manipulations, deliberations and embellishments cannot be ruled out. In fact it does appear from an over-all reading of the evidence of the prosecution that Ext.PW-13/A is the result of manipulation.

12. Testimony of PW-1 Kumari Komal, the daughter of the deceased, who claims to be an eye-witness, could have also not been believed unless corroborated because she is contradicted by her previous statement, which she made to the police. She is contradicted by the version given to the police. In the cross examination, she admitted that to the police she has stated that her mother caught fire accidentally while lighting the stove.

13. Testimony of PW-1 is further contradicted by the medical evidence on record. She has testified that the appellant was in a drunken state, when he committed the crime. However, the medico legal certificate Ext.PW-9/B of the appellant, who was subjected to medico legal examination soon after the incident does not indicate that he was drunk.

14. PW-1 appears to have made the statement in the Court under the influence of the parents of the deceased. She has admitted in the cross-examination that ever-since the death of her mother, she has been staying with the parents of her mother at Kharar and it is they who are maintaining and looking after her.

15. In view of the above stated position, we are of the considered view that the trial Court has not only not appreciated the evidence correctly but it has even mis-read the evidence. Hence, the appeal is accepted, judgment of the trial Court, convicting and sentencing the appellant, is set aside. As a sequel to the acceptance of the appeal and setting aside of the judgment of the trial Court and for the reasons recorded hereinabove, the appellant is acquitted. He being in Jail, serving out the sentence awarded by the trial Court, is ordered to be set at liberty forthwith, in case his detention is not required in any other case.

(Surjit Singh), J.

July 23, 2007. ***(Kuldip Singh), J.***

(soni)